95-1698

Supreme Court, U.S.
FILED
MAY 6 1996
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No._____

In The
Supreme Court of the United States
October Term, 1995

STRATTON GEORGOULIS,
Petitioner,

v.

UNITED STATES OF AMERICA and
ALLIED PRODUCTS CORPORATION,
Respondents.

Brief in Opposition to Petition For Writ of Certiorari to
The United States Court of Appeals for the Eighth Circuit

ALLIED PRODUCTS CORPORATION'S BRIEF IN OPPOSITION

Robert L. Driscoll
Counsel of Record
Stephen J. Owens
Russell A. Berland

STINSON, MAG & FIZZELL, P.C.
1202 Walnut
Post Office Box 419251
Kansas City, Missouri 64141-6251
Telephone: (816) 842-8600

Legal America, Ltd.-Kansas City, Missouri (816) 471-0110

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QUESTION PRESENTED

Whether an officer and ultimate owner of a corporation can be liable as a person who arranged for the disposal of hazardous substances under CERCLA § 107(a)(3) when he exercised pervasive and usurping control over the corporation, had the authority to control the corporation's generation and disposal of hazardous substances, and exercised actual and substantial control, directly or indirectly, over the corporation's generation and arrangement for disposal of hazardous substances.

PARTIES

PETITIONER: Stratton Georgoulis

RESPONDENTS: United States of America Allied Products Corporation

Allied Products Corporation has no parent corporations or non-wholly owned subsidiaries. Sup. Ct. R. 29.6.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent Allied Products Corporation ("Allied") files this Brief in Opposition to the Petition for a Writ of Certiorari and would respectfully show as follows:

STATEMENT OF THE CASE

During the period 1980 to 1985, White Farm Equipment Company ("WFE") arranged to have H.E. Construction Company haul and transport waste foundry sand and ash from WFE's farm implement manufacturing facility in Charles City, Iowa to a privately-owned dumpsite (the "Dumpsite"). The waste foundry sand and ash contained lead, cadmium, and chromium, which are hazardous substances under CERCLA. There has been a release of hazardous substances from the Dumpsite and the remedial actions required to clean up the Dumpsite have resulted in Allied incurring substantial response costs.

From November 1980 to December 31, 1981, Petitioner Stratton Georgoulis ("Georgoulis") owned WFE in the following manner: Georgoulis owned all of the stock of TIC Investment Corporation ("TICI"), which owned all of the stock of White Farm Industries ("WFI"), which owned all of the stock of White Farm U.S.A. ("WFUSA")[1], which owned all of the stock of WFE. From December 31, 1981 to May 1985, Georgoulis owned WFE in the following manner: Georgoulis owned all of

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[1] TICI incorporated WFI and WFUSA in November 1980 with $1000 in capital each. WFUSA purchased WFE in exchange for a $1 million promissory note and an assumption of WFE's prior liabilities. The $1 million promissory note was never paid.

the stock of TIC United Corporation ("TICU") (TICI and TICU are collectively referred to as the "TIC Companies"), which owned all of the stock of WFI, which owned all of the stock of WFUSA, which owned all of the stock of WFE.

Georgoulis was Chairman of the Board for TICI, TICU, WFI, WFUSA, and WFE from 1980 to 1985, and he was President of WFE from December 19, 1980 to November 23, 1981. On two separate occasions, Georgoulis hired another person as WFE president; each served nominally for about one year before being fired by Georgoulis. As Chairman of the Board for WFE, Georgoulis was the "ranking and chief executive officer of the corporation." Georgoulis had "all of the powers granted by the bylaws to the president, including the power to make and sign contracts and agreements in the name and on behalf of the corporation. . . . He shall also, in general, have supervisory powers over . . . the business activities of the corporation, subject to the approval of the board of directors." Bylaws of WFE.

The Board of Directors for each of the above entities from December 1980 to May 1983 consisted of two individuals: Georgoulis and an employee of the TIC Companies. As only one of two board members, no board action could take place without Georgoulis' approval. The Board of Directors for WFE was expanded from two to five directors on May 20, 1983 after a major creditor required board expansion as a condition of refinancing.

Consistent with his power to control all aspects of WFE, Georgoulis exercised that power to indirectly yet inescapably control WFE's arrangements for disposal of its hazardous foundry sand and ash. Georgoulis made decisions and took actions which had the inevitable effects of (1) preventing any person at WFE from changing WFE's absurdly inexpensive arrangement for disposal of hazardous foundry sand and ash at

the Dumpsite[2] and (2) determining the amount of hazardous waste generated by WFE.

Georgoulis set the excessively restrictive financial policy at WFE which made a more expensive, environmentally-acceptable means of disposal for the foundry sand and ash impossible. He and TIC employee, Emerson "Buck" Barrett ("Barrett"):

> looked at every possible thing that we could find . . . that might save a buck because the patient [i.e. WFE] was bleeding. . . . We — the search was constantly for dollars in anywhere they could be found and appropriately so. . . . He, [i.e. Georgoulis] needed to — wanted to know everything about everything and, again, appropriately. The — I spent my time on — first and foremost on whatever it was that Strat [Georgoulis] — was on Strat's agenda on a particular day or hour and my — any efforts that I made on my own were under the direct and implied concerns of Strat to reduce his expenditures at White Farm.

Deposition of Emerson Barrett.

According to WFE employees, Georgoulis completely dominated all of the decision making at WFE and did not delegate this responsibility to others. WFE employees were under strict orders from Georgoulis not to increase WFE's costs and to do everything possible to reduce costs at the company across the board. Whenever WFE employees did not do exactly what Georgoulis expected, Georgoulis terminated them.

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[2] The bills from H.E. Construction for hauling and disposing of the foundry sand and ash reflect costs to be expected for nonhazardous rather than hazardous waste handling.

Prior to TIC's purchase of WFE, WFE leased the Dumpsite from H.E. Construction Company "for the specific purpose of Lessee using said real estate for a dumping ground for disposing of its casting facility's solid waste material." When TIC management directed that any standing lease, maintenance contract, or service contract had to be justified or it would be terminated, this Lease of the Dumpsite was reviewed to determine whether or not to continue it. The renewal of this Lease was within the area of responsibility of Robert Fuller ("Fuller"). Fuller held the titles of Chief Operating Officer and Executive Vice-President of WFE (January 1981 to April 1982) and President of WFE (October 1982 to October 1983), but he had virtually no decision-making authority independent of Georgoulis. Fuller testified that he would have brought the renewal of the Lease to Georgoulis' attention because Georgoulis wanted to be informed on any action requiring the expenditure of a significant amount of money. Because there was no other means of disposing of the waste which met Georgoulis' strict financial constraints, the Lease was continued during the period of Georgoulis' ownership by means of a notation on a purchase order to H. E. Construction.

Georgoulis maintained constant control over all aspects of WFE's operations and management. Georgoulis stayed in constant, and often daily, contact with WFE officers and employees through telephone calls. Georgoulis would sometimes call a single WFE officer or employee ten times in one day. According to one TIC employee, "Strat [Georgoulis] lived on the telephone . . .." In addition, Georgoulis maintained an office at WFE's headquarters in Oak Brook, Illinois, and at a minimum, chaired bi-weekly and monthly staff meetings in the WFE corporate offices.

Hazardous waste foundry sand and ash were generated during the casting of tractor bodies and parts in the foundry at the WFE Charles City facility. Georgoulis personally set the production levels of those tractors at the Charles City facility,

thus determining the amount of hazardous foundry sand and ash generated. Georgoulis also set the marketing and financing plans available to WFE tractor dealers, thereby further setting the production volume of WFE tractors. Similarly, Georgoulis determined the number of production personnel and other staff available at each plant. During the period of his ownership and control, Georgoulis personally reviewed the status of each employee of WFE's Charles City plant and foundry to determine whether to retain or fire that individual.

Georgoulis had other significant personal involvement in the management of WFE. Georgoulis requested and received weekly manpower and employee benefit reports on all WFE personnel. Georgoulis ordered the reduction of the salaried non-union pension plans at WFE in 1981. He ordered the discontinuance of the salaried retiree insurance program and its change into a contributory plan. Georgoulis ordered and directed renegotiations with the United Auto Workers in 1981 in an effort to secure additional concessions in wages and benefits. He personally negotiated on behalf of WFE with the Pension Benefit Guarantee Corporation following his decision to terminate the hourly pension plans.

In May of 1983, Georgoulis negotiated on behalf of WFE with its major creditor concerning terms for the refinancing of a loan and failed to involve or even inform Fuller, the then-current President of WFE, of the refinancing. According to a number of WFE officers and employees, no one at WFE made significant decisions besides Georgoulis, who owned and operated WFE as he saw fit.

According to Barrett, "White Farm was out of business. TIC was the — the corporation that was operating the business. There was no White Farm except in name," and "there was no management except that of TIC," for which Georgoulis was the Chairman of the Board, CEO, President, and sole shareholder.

REASONS FOR DENYING THE WRIT

Under the unusual and undisputed facts presented above, the United States District Court for the Northern District of Iowa ("District Court") and the United States Court of Appeals for the Eighth Circuit ("Eighth Circuit") found Georgoulis liable under CERCLA § 107(a)(3) as a person who "by contract, agreement, or otherwise arranged for disposal" of hazardous substances. These courts found that the individual who owned WFE, who had the authority to control and did pervasively control the operations and management of WFE, who tightly exercised that control in a manner that usurped the power of WFE's officers and supervisors, who set excessively restrictive financial policies that did not allow for an environmentally sound method of disposal of hazardous wastes, and who thereby indirectly yet inescapably arranged for the disposal of WFE's hazardous substances was liable as an arranger under CERCLA § 107(a)(3). In so finding, these courts followed established precedent which is consistent among the circuits.

This is not a decision which is worthy of review by the Supreme Court. This is an intensively fact-bound decision which, due to the unusual nature of the facts, does not have broad applicability. There is no conflict between this decision by an unanimous Eighth Circuit panel and the decisions of any other circuits. *See* Sup. Ct. R. 10(a). The Eighth Circuit's standard for liability of a person who arranged for the disposal of hazardous substances under CERCLA § 107(a)(3), as expressed in its decision in this case, is entirely consistent with other circuits' standard of arranger liability under CERCLA. Petitioner has mischaracterized the standard of arranger liability in this decision to attempt to create a conflict among the circuits where none exists. Finding Georgoulis liable in this case is also entirely consistent with the language and purposes of CERCLA and with established Eighth Circuit precedent. Respondent Allied

respectfully requests the Court to deny Georgoulis' petition for a writ of certiorari.

A. Arranger Liability Under CERCLA

The Eighth Circuit's standard for arranger liability under CERCLA is consistent with the standard of other circuits that have addressed it and is substantially different from the Petitioner's characterization of it. The standard as stated by the Eighth Circuit is as follows:

> the proper standard to be applied in this case imposes direct arranger liability on a corporate officer or director if he or she had the authority to control and *did in fact exercise actual or substantial control, directly or indirectly, over the arrangement for disposal, or the off-site disposal, of hazardous substances.*

United States v. TIC Inv. Corp., 68 F.3d 1082, 1089 (8th Cir. 1995) (emphasis added).

The Petitioner has asserted that Georgoulis was held liable as an arranger merely because, as Chairman and sometime President of WFE, he had the authority to control WFE's disposal of hazardous substances. Unlike the Petitioner's characterization, the court below did not let Georgoulis' liability rest merely on his "authority to control" WFE's arrangement to dispose of hazardous substances. Instead, the Eighth Circuit held:

> [A] finding of arranger liability requires some level of *actual participation* in, or *exercise of control* over, activities that are *causally connected* to, or have some *nexus* with, the arrangement for disposal of hazardous

substances or the off-site disposal itself.

TIC Inv., 68 F.3d at 1987-88, 90 (citing *General Elec. Co. v. AAMCO Transmissions, Inc.*, 962 F.2d 281, 286-87 (2d Cir. 1992)) (emphasis added).

Petitioner argues that the mere "authority to control" standard, which he asserts was adopted by the court below, makes every chief executive officer of every corporation who delegates authority and relies on the judgments of others "potentially liable as a person who arranged for the disposal of that corporation's waste." See Petition for Writ of Certiorari at 7. This argument disappears under a true reading of the Eighth Circuit's decision. The Eighth Circuit specifically found that Georgoulis would *not* have been liable as an arranger if he, like most corporate CEO's, had "truly delegated authority to others and allowed those individuals to exercise their judgment with respect to WFE's waste disposal practices without his interference." *TIC Inv.*, 68 F.3d at 1090. In contrast, under the unique facts of this case, Georgoulis *was* held liable because he "so usurped the power of those who were only nominally running WFE," and "so tightly controlled WFE['s] . . . budgetary aspects, that he left WFE employees with no other choice but to continue with the relatively inexpensive arrangement that had historically existed between WFE and [H.E. Construction]." *Id.* Georgoulis exercised substantial control over WFE's waste disposal arrangement because "Georgoulis' actions inexorably led to the continuation of the disposal of WFE's wastes at the dumpsite." *Id.* The Eighth Circuit therefore has not opened any floodgates of CERCLA liability for corporate CEO's by this fact-based decision.[3]

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[3] Generally, the Supreme Court will not grant certiorari when review is sought of a lower court decision which turns solely upon an analysis of the particular facts involved. Stern, Gressman, Shapiro, and Geller, Supreme Court Practice (7th ed. 1993) at 4.14 p.189.

B. This Decision Is Not in Conflict with Decisions of Other Courts of Appeals

The decision of the court below is consistent with the decisions of other circuit courts which define the boundaries of arranger liability under CERCLA § 107(a)(3). Petitioner argues that the decision below conflicts with *General Elec. Co. v. AAMCO Transmissions, Inc.*, 962 F.2d 281 (2d Cir. 1992); *Amcast Indus. Corp. v. Detrex Corp.*, 2 F.3d 746 (7th Cir. 1993), cert. denied, 114 S. Ct. 691 (1994); *United States v. USX Corp.*, 68 F.3d 811 (3d Cir. 1995); and *Florida Power & Light Co. v. Allis Chalmers Corp.*, 893 F.2d 1313 (11th Cir. 1990). No circuit has stated that any of its decisions conflict with the decision below, nor has the Eighth Circuit stated that its decision conflicts with the decisions of any other circuit. As shown below, no such conflict exists.[4]

General Electric is in complete agreement with the Eighth Circuit's decision in this case. The Second Circuit stated the following standard for arranger liability under CERCLA:

> Although arranger liability can attach 'to parties that do not have active involvement regarding the timing, manner or location of disposal,' there must be some nexus between the potentially responsible party and the disposal of the hazardous substance. This nexus is premised upon the potentially liable party's conduct with respect to the disposal or transport of hazardous wastes.

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[4] Petitioner also argues that the Eighth Circuit's decision conflicts with district court decisions both within and outside the Eighth Circuit. However, absent some unusual circumstances not present here, the Supreme Court does not grant certiorari to review a decision of a federal court of appeals because it is in conflict with a decision rendered by a district court. Supreme Court Practice at 4.8 p. 178-79

General Elec., 962 F.2d at 286 (citations omitted). The Eighth Circuit actually took its "nexus" requirement for arranger liability from the *General Electric* decision. *TIC Inv.*, 68 F.3d at 1087 & n.4. The General Electric court adopted a standard for arranger liability that is very similar to the Eighth Circuit's standard: "it is the *obligation* to exercise control over hazardous waste disposal . . . that makes an entity an arranger under CERCLA's liability provision." *General Elec.*, 962 F.2d at 286 (emphasis added). The Second Circuit held that oil companies that leased service stations to dealers were not liable as arrangers because they had "no obligation to arrange for the disposal of waste oil collected by their dealers." *Id.* at 287. *General Electric* is in complete agreement with the Eighth Circuit's decision.

The Seventh Circuit's decision in *Amcast* is consistent with the decision below. The fact that *Amcast* states that the words "arranged for" "imply intentional action" does not conflict with the Eighth Circuit's decision. 2 F.3d at 751. In *Amcast*, a distributor of trichloroethylene hired a common carrier to haul virgin trichloroethylene to a customer. *Id.* at 747-48. The Seventh Circuit found that the distributor was not liable as an arranger under CERCLA after the hired common carrier spilled trichloroethylene on the ground while transferring the material into the customer's holding tank.

The Seventh Circuit held that arranger liability did not exist because no one was "trying to arrange for the disposal of hazardous wastes . . .." *Id.* at 751. The distributor was merely attempting to deliver a valuable product to a customer and there was no finding that spilling hazardous wastes was inherent in the transportation of the virgin trichloroethylene. Therefore, there was no "arrangement" for disposal of hazardous substances. *See TIC Inv.*, 68 F.3d at 1087 n.3 (Eighth Circuit held that the Amcast decision was not in conflict with its own decision and that there was *"no arrangement"* in the *Amcast* case). In contrast, there is no dispute that WFE arranged with

H.E. Construction to dispose of hazardous foundry sand and ash at the Dumpsite and that Georgoulis continued this arrangement at WFE by his excessive control and overly restrictive financial policies. In this case, there were intentional acts by WFE to arrange for the disposal of hazardous substances and intentional acts by Georgoulis to exercise excessive control and maintain overly restrictive financial policies. Therefore, *Amcast* is not in conflict with the decision below.

The Third Circuit's *USX Corp.* decision is not in conflict with the Eighth Circuit's decision below. *See* 68 F.3d 811. In *USX Corp.*, the United States filed a motion for summary judgment against individual officers of a waste hauling company. The United States' claims against the officers related to the company's disposal of drums of hazardous wastes on an employee's wooded parcel of land. *Id.* at 816. The Third Circuit held that one of the critical elements of transporter liability under CERCLA § 107(a)(4) is that the transporter "either selected the disposal facility or has substantial input into deciding where the hazardous substance should be disposed." *Id.* at 820. As the Court explained, this active participation standard for site selection is unique to transporter liability because "transporters often play an influential role in the decision to dispose waste at a given facility." *Id.* at 821. There is no such requirement for site selection for arranger liability under CERCLA § 107(a)(3). *Acme Printing Ink Co. v. Menard, Inc.*, 881 F. Supp. 1237, 1249 (D. Wis. 1995); *United States v. Mottolo*, 695 F. Supp. 615, 626 (D.N.H.1988); *United States v. Conservation Chem. Co.*, 619 F. Supp. 162, 233-34 (W.D. Mo.1985); *United States v. Ward*, 618 F. Supp. 884, 895 (E.D.N.C.1985).

In *USX Corp.* there was no evidence that any of the individual defendants chose, participated in choosing, or took any actions that had the inevitable result of choosing the disposal site. *Id.* at 825. There was, however, evidence that the individual defendants had little involvement in the operational aspects of

the day-to-day business. *Id.* at 825-26. This differs significantly from Georgoulis' actions at WFE in which he usurped power from officers and employees of WFE and, through such personal control and excessive financial restrictions, left WFE employees with no other choice but to continue the arrangement for disposal of hazardous foundry sand and ash at the Dumpsite. Because "transporter" liability under CERCLA § 107(a)(4) differs so significantly from "arranger" liability and because the facts of the two cases differed in such important ways, *USX Corp.* is not in conflict with the decision of the court below.

The decision below is entirely consistent with the Eleventh Circuit's *Florida Power* decision. In *Florida Power*, the Eleventh Circuit construed CERCLA liberally due to its "broad remedial nature." 893 F.2d at 1318. That court held that a party may be liable even though it "does not make the critical decisions as to how, when, and by whom a hazardous substance is to be disposed . . .." *Id.* The *Florida Power* court, like the Eighth Circuit here, only required that a person "is the party responsible for 'otherwise arranging' for the disposal of the hazardous substance" in order to be liable as an arranger under CERCLA § 107(a)(3). Id. In that case, the court reached the unremarkable conclusion that manufacturers of electrical transformers containing PCB's who sold the transformers to Florida Power & Light forty years prior to their discontinuation and disposal had not "otherwise arranged" for the disposal of the PCB's. *Id.* at 1318-19. The *Florida Power* decision of the Eleventh Circuit is not in conflict with the decision below.

Because Petitioner has not shown any conflict between the decision of the Eighth Circuit and the decisions of any other circuits, Petitioner has no basis for a writ of certiorari under Sup. Ct. R. 10(a).

C. The Eighth Circuit's Rejection of a "Specific Intent" Requirement For Arranger Liability Agrees With Its Own Precedent, Precedent of Other Circuits, And The Language And Goals of CERCLA

The gist of Petitioner's remaining argument is that the Eighth Circuit erred in ignoring its own precedent by rejecting the "specific intent" requirement for arranger liability under CERCLA, ignoring precedent from other circuits, and ignoring the language and policies of CERCLA. As shown below, each of these contentions is in error.

1. Eighth Circuit Precedent and the *Aceto* Decision

The Eighth Circuit has already determined that the decision below is consistent with its prior decisions regarding liability under CERCLA.[5] When the Eighth Circuit finds that the decision of a panel "directly conflicts with Supreme Court or Eighth Circuit precedent," it may order a hearing en banc. 8th Cir. R. 35A(a). Petitioner has already moved for rehearing en banc on the basis that the decision below was in conflict with Eighth Circuit precedent. The Eighth Circuit denied Petitioner's Suggestion for Rehearing En Banc on January 3, 1996. Appendix to Petition for Writ of Certiorari at 53.

Petitioner argues that the decision below is in conflict with *United States v. Vertac Chemical Corp.*, 46 F.3d 803 (8th Cir.), *cert. denied*, 115 S. Ct. 2609 (1995). In *Vertac*, the key issue was whether the "United States 'owned or possessed' hazardous substances within the meaning of § 9607(a)(3)," in order to be liable as an arranger under CERCLA for the disposal of hazardous wastes associated with the production of Agent

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[5] Ordinarily, a conflict between decisions rendered by different panels of the same court of appeals is not a sufficient basis for granting a writ of certiorari. Supreme Court Practice at 4.6 p. 176-77

Orange. 46 F.3d at 810. The Eighth Circuit determined that the United States did not "own or possess" the disposed hazardous substances. *Id.* at 810-11. In contrast, in the decision below, "there is no dispute that the hazardous substances disposed of at the dumpsite were owned by defendants [including Georgoulis]." *TIC Inv.*, 68 F.3d at 1086. Also, the decision below echos *Vertac* in requiring more than mere "authority to control" for liability. *Id.* at 1087. Therefore, there is no conflict either in the standard for arranger liability or in the application of the standard to the respective defendants.[6]

In the decision below, the Eighth Circuit held that it had already "implicitly rejected a specific intent requirement" for arranger liability under CERCLA in *United States v. Aceto Agric. Chems. Corp.*, 872 F.2d 1373 (8th Cir. 1989) (Aceto). *TIC Inv.*, 68 F.3d at 1088. Petitioner argues that the Eighth Circuit has incorrectly interpreted its own decision in *Aceto* and has misinterpreted Eighth Circuit precedent applicable to arranger liability under CERCLA. Petition for Writ of Certiorari at 14-15 & n.4. However, the *Aceto* decision is clear in rejecting a specific intent requirement.

In *Aceto*, pesticide manufacturers sent pesticides to a formulator for blending and packaging and the formulator improperly disposed of the hazardous wastes that resulted from the blending and packaging operation. *Aceto*, 872 F.2d at 1375. The United States and the State of Iowa sued the pesticide manufacturers as arrangers under CERCLA § 107(a)(3). *Id.* The manufacturers argued that the complaint against them should be dismissed because "the plain meaning of the statute requires

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[6] Nor is the decision below inconsistent with *United States v. Gurley*, 43 F.3d 1188 (8th Cir. 1994), *cert. denied*, 116 S. Ct. 73 (1995), in which the Eighth Circuit discussed but did not attempt to delineate the standard for arranger liability under CERCLA § 107(a)(3). The *Gurley* case applied only an operator liability standard under CERCLA §107(a)(2).

an intent to dispose of some waste" in order to impose arranger liability under CERCLA § 107(a)(3). *Id.* at 1379 (emphasis added). In fact, the defendants argued that dictionary definitions of the word "arrange" requires an element of intent. *Id.* at 1380. The Eighth Circuit expressly rejected the manufacturers' intent arguments and held that the complaint stated a cause of action under CERCLA § 107(a)(3) because (1) the generation of hazardous wastes was inherent in the pesticide formulation process, (2) the formulator could not formulate the manufacturers' pesticides without wasting and disposing of some portion of them, and (3) manufacturers could not have hired the formulator to formulate their pesticides without also "arranging for" the disposal of the waste.[7] *Id.* at 1379, 1382. Therefore, it is clear that "intent to dispose" is not an element of arranger liability under CERCLA § 107(a)(3).

2. Other Circuits Have Also Followed The *Aceto* Decision

Numerous courts of appeal have cited the Eighth Circuit's *Aceto* decision with favor. In *General Electric*, the Second Circuit cited *Aceto* with approval as an example of a court finding a nexus between the potentially liable party and the disposal of hazardous substances. 962 F.2d at 286-87. In *Jones-Hamilton Co. v. Beazer Materials & Services, Inc.*, because the facts of the case were so similar to those in *Aceto*, the Ninth Circuit denied summary judgment to a chemical manufacturer defendant who had contracted with a chemical formulator that had disposed of hazardous substances. 973 F.2d 688, 695 (9th Cir. 1992). In *Florida Power*, the Eleventh Circuit cited Aceto as support for its rejection of the requirement that in order for persons to be liable as arrangers for disposal of hazardous substances under CERCLA § 107(a)(3) they must

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[7] There was no allegation in *Aceto* that the manufacturers knew or should have known that the generation of hazardous wastes was inherent to the presticide formulation process.

have "made the crucial decision how it would be disposed of or treated, and by whom." 893 F.2d at 1318 (citing with disapproval *United States v. A & F Materials Co.*, 582 F. Supp. 842 (S.D. Ill. 1984), on which Petitioner relies in Petition for Writ of Certiorari at 16). As seen here, the Eighth Circuit's rejection of the specific intent requirement for arranger liability in *Aceto* has met with approval by the other circuits that have addressed the issue.

3. Requiring "Specific Intent" Would Not Meet the Language and Purposes of CERCLA

The Eighth Circuit's interpretation of CERCLA § 107(a)(3) to include as arrangers persons who "had the authority to control and did in fact exercise actual or substantial control, directly or indirectly, over the arrangement for disposal of hazardous substances" is consistent with the language and purposes of CERCLA. "Congress used broad language in providing for liability for persons who 'by contract, agreement, *or otherwise arranged for*' the disposal of hazardous substances" in CERCLA § 107(a)(3). *Aceto*, 872 F.2d at 1380 (emphasis in original). "Congress has not, however, provided a definition for the phrase 'otherwise arranged'" in CERCLA. *General Elec.*, 962 F.2d at 285. A liberal judicial construction of this phrase as used in the decision below is consistent with CERCLA's "overwhelmingly remedial" statutory scheme. *Florida Power*, 893 F.2d at 1317.

As the Eighth Circuit explained, finding Georgoulis liable is consistent with Congress' goals in enacting CERCLA:

> (1) to ensure that those responsible for the problems caused by hazardous wastes are required to pay for the clean-up costs . . . and (2) to ensure that responsible persons are not allowed to avoid liability by remaining idle.

TIC Inv., 68 F.3d at 1088. Because "CERCLA places the ultimate responsibility for clean up on those *responsible* for problems caused by the disposal of chemical poisons," *Aceto*, 872 F.2d at 1377 (emphasis added), a corporate officer who owns and intrusively runs a corporation and "dictate[s] hazardous waste decisions through day-to-day strict control of budgets, production, and capital investments," who strips the employees of their independent decision-making, but who "knows well enough to close his or her eyes to the specific details of the company's hazardous waste disposal practices" should be liable under CERCLA for that corporation's arrangements for disposal of hazardous substances. *See TIC Inv.*, 68 F.3d at 1089. This meets the "overwhelmingly remedial" statutory scheme of CERCLA, *see Florida Power*, 893 F.2d at 1317, by not allowing those ultimately responsible for the disposal of hazardous substances to escape liability.

CONCLUSION AND PRAYER FOR RELIEF

The decision of the Eighth Circuit that held Georgoulis liable as an arranger under CERCLA § 107(a)(3) follows the plain language and the purposes of the statute, which place liability on one who "otherwise arranged" for disposal of hazardous substances. This fact-based decision, which reiterates previously-established standards of arranger liability of a corporate owner and officer under CERCLA § 107(a)(3), is not in conflict with the decisions of other courts of appeal or with Eighth Circuit precedent. Respondent Allied respectfully requests that the petition for writ of certiorari be denied.

Respectfully Submitted,
STINSON, MAG & FIZZELL, P.C.

Robert L. Driscoll
Counsel of Record
Stephen J. Owens
Russell A. Berland
1201 Walnut
Post Office Box 419251
Kansas City, Missouri 64141-6251
(816) 842-8600

ATTORNEYS FOR PLAINTIFF
ALLIED PRODUCTS
CORPORATION